

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P.(CAA) No. 384 / KB/2017

Connected with CA No. 108/KB/2017

In the Matter of

A Petition for sanction of Scheme of Amalgamation made under Section 232 (3) of the companies Act, 2013 read with Rules 15 of the companies (compromises , Arrangements and Amalgamations) Rules, 2016.

- And -

IN THE MATTER OF:

1. MODERN MINING PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at Magurgadia, Keonjhar Keonjhar Garh Keonjhar-758001, in the state of Odisha within the aforesaid Jurisdiction.

- And -

2. K K PELLETS PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at N.H - 6 Near Bank Of Baroda Keonjhar-758001, in the state of Odisha within the aforesaid Jurisdiction.

- And -

Sd

3. . BRM HI-TECH STEELS PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at Sirajuddin Square Keonjhargarh Keonjhar-758001, in the state of Odisha within the aforesaid Jurisdiction

- And -

4. RAJESH IMPORTS PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at 26/5, Kabi Nabin Sen Road Nager Bazar, Dumdum Kolkata-700028, in the state of West Bengal within the aforesaid Jurisdiction.

- And -

5. SHOWHOUSE TRACON PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at 26/5, Kabi Nabin Sen Road Nager Bazar, Dumdum Kolkata-700028, in the state of West Bengal within the aforesaid Jurisdiction

WITH

KK RESOURCES PRIVATE LIMITED. A company incorporated under the Companies Act, 1956; and having its Registered Office at Magurgadia, Keonjhargarh Keonjhar-758001 in the State of Odisha, within the aforesaid Jurisdiction.

AND

Sd

IN THE MATTER OF:

1. MODERN MINING PRIVATE LIMITED
2. K K PELLETS PRIVATE LIMITED.
3. BRM HI-TECH STEELS PRIVATE LIMITED.
4. RAJESH IMPORTS PRIVATE LIMITED.
5. SHOWHOUSE TRACON PRIVATE LIMITED.
6. KK RESOURCES PRIVATE LIMITED.

.....PETITIONERS

Coram : Shri Madan B Gosavi, Member(Judicial)

For the Petitioner :

1. Mr Laxmi Dhar Sahoo, Advocate

Date of pronouncement of the Order :

Per Shri Madan B Gosavi, Member(Judicial)

**ORDER**

1. This petition has been filed by Modern Mining Private limited, K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, ShowHouse Tracon Private Limited, the Transferor companies, with K K Resources Private Limited the Transferee company for sanctioning of the Scheme of Amalgamation under the

Sd

provisions of sections 230 to 232 of the companies Act 2013 read with the relevant rules made there under.

2. The object of this petition is to ultimately obtain sanction of the Tribunal to the proposed scheme of Amalgamation of Modern Mining Private limited, K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, ShowHouse Tracon Private Limited, the Transferor companies, with K K Resources Private Limited, the Transferee company where all the properties assets, rights and claims whatsoever of the Transferor companies and their entire undertaking together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee company on the terms and conditions as fully stated in the said Scheme of Amalgamation, a copy of which has been annexed and marked with Annexure A to this petition .

3. The petitioners submitted that this proposed amalgamation scheme shall result in consolidation of the business in one entity and strengthen the position of the merged entity . All the applicant companies belong to the same group and are managed and controlled by the same management. This amalgamation would lead to a more efficient utilization of capital for future growth of the amalgamated entity and result in administrative and operational rationalization, organization efficiencies reduction in overheads and other expenses and optimal utilization of various resources. it would also reduce the managerial overlaps involved in operating different entities ease and increase operational and management efficiency integrate business functions and eliminate duplication and rationalization of administrative expenses.

4. It is stated in the Petition that the Petitioner companies are Private Companies and none of the petitioner companies is listed with any stock exchange and that the proposed scheme of amalgamation will not attract the provisions of the Competition Act, 2002. Hence, no approval of the Competition Commission of India is required.

5. It has been further stated that two of the Petitioner companies, Transferor Companies, namely, Rajesh Imports Pvt. Ltd and Showhouse

Sd

Tracon Pvt. Ltd are registered as non –deposit taking non-banking finance company.

6. The petitioners have also submitted that the Reserve Bank of India, vide their letter No.DNBS. RO.Kol.No. 10806/99.06.002/2017-18 dated March 26, 2018, advised that the Bank does not have any objection to the proposed amalgamation of Transferor Companies, namely, Modern Mining Private limited, K K Pellets Private Limited, BRM Hi-Tech Steels Private Limited, Rajesh Imports Private Limited, Showhouse Tracon Private Limited, with KK Resources Private Limited, the Transferee Company.

7. This Tribunal, vide Order dated 26<sup>th</sup> May 2017, passed in Company Application CA No. 108/KB/2017, have dispensed with the convening and holding of the meeting of the equity shareholders of the petitioners as the shareholders have given their consent to the proposed Scheme of Amalgamation.

8. Vide the aforesaid Order of this Tribunal dated 26<sup>th</sup> May, 2017, as none of the Petitioner Companies have any creditor, there were no requirement of convening and holding of separate meetings of the Creditors of the Petitioner Companies.

9. Pursuant to the said Order of this Tribunal dated 26<sup>th</sup> May, 2017, notice in form CAAA -3 along with the Company Petition and copy of the order were served upon the central Government through Regional Director, Kolkata, ROC Orissa and West Bengal the Official Liquidator, Orissa and West Bengal, Reserve Bank Of India Kolkata and the Income Tax Department within whose jurisdiction the assessment of the petitioners are made.

10. The Copies of the notices sent to different authorities along with Speed Post receipts at Annexure-A 18.

Sd

11. Pursuant to the said Order of this Tribunal dated 26<sup>th</sup> May, 2017 advertisement for hearing of the publication had been published in two leading newspapers in West Bengal and in Odisha on 07-06-2017 in English and in Oriya and on 08-06-2017 in Bengali.

12. The copies of the Advertisements are annexed with the Petition and marked as Annexure A-19.

13. The petitioners have also submitted that in compliance with section 230 (7) of the Act, statutory Auditor of the transferee company has certified that the Accounting treatment is in conformity with the Accounting standards under section 133 of the Act.

14. A copy of the said certificate is attached to the petition as Annexure –A 14 at page 339.

15. After such due compliance, the petitioners have made the instant petition bearing No. CP (CAA) NO. 384/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation and for orders facilitating and giving effect to the same.16.

16. Heard the arguments of the Ld. Counsel for the petitioner.

17. Let Notice be served along with a copy of the Scheme of Amalgamation on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, Odisha and West Bengal, Securities Exchange Board of India, and the concerned Assessing Officer along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies the Official Liquidator and also the Reserve Bank of India, having jurisdiction over the transferor and transferee companies, through personal messenger or Speed Post and E-mail, both.

Sd

18. The notice shall specify that representation, if any should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their advocates, if no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.

19. Let the advertisement of the hearing of this petition be published in two leading newspapers in West Bengal and Odisha once in English newspaper Business Standard and once in vernacular newspaper stating the PAN numbers of all the Petitioner Companies, at least 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

20. The Petitioner Companies shall file an affidavit along with copy of notice within 14 days regarding service of notice.

21. The petition CP(CAA) No. 384/KB/2017, connected with CA No. 108/KB/2017 is fixed for hearing on 06-09-2018.

22. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

  
(M.B. Gosavi)  
Member (Judicial)

GOUR\_STENO